



# PUBLIC NOTICE

**Federal Communications Commission**  
**445 12<sup>th</sup> St., S.W.**  
**Washington, D.C. 20554**

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**DA 02-579**

**Released: March 11, 2002**

## **COMMISSION SEEKS COMMENT ON APPLICATIONS FOR CONSENT TO TRANSFER CONTROL FILED BY XO COMMUNICATIONS, INC.**

**Pleading Cycle Established**  
**IB Docket No. 02-50**

**Comments/Petitions Due: April 10, 2002**

**Responses/Oppositions to Petitions Due: April 24, 2002**

### **THE TRANSACTION**

On February 21, 2002, XO Communications, Inc. ("XO" or "Applicant") filed applications pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (the "Act"), seeking Commission approval of the proposed transfer of control of certain Commission licenses and authorizations held by Craig O. McCaw and the existing shareholders of XO to the new shareholders of XO, which will include, as 10 percent or greater shareholders, Forstmann Little & Co. Equity Partnership-VII, L.P. ("Forstmann Little Equity VII") and Forstmann Little & Co. Subordinated Debt and Equity Management Buyout Partnership-VIII, L.P. ("Forstmann Little MBO VIII" and, collectively with "Forstmann Little Equity VII", "Forstmann Little"), and Teninver, S.A. de C.V. ("Teninver"), an indirect wholly owned subsidiary of Teléfonos de México, S.A. de C.V. ("Telmex", and together with Forstmann Little, the "New Shareholders"). Specifically, the licenses and authorizations to be transferred include licenses and authorizations held by XO and its subsidiaries to provide domestic and international telecommunications services pursuant to parts 63, 90, and 101 of the Commission's rules. In addition, the Applicant seeks a declaratory ruling pursuant to section 310(b)(4) of the Act, that it will not serve the public interest to prohibit indirect foreign ownership of XO's wireless licenses in excess of the statutory 25 percent foreign ownership benchmark by Telmex and a general partner of Forstmann Little, Gordon A. Holmes, a citizen of the Republic of Ireland.<sup>1</sup>

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<sup>1</sup> In addition, XO has informed us that it expects to file for bankruptcy under Chapter 11 of the Bankruptcy Code in order to effectuate any agreement reached with its creditors regarding XO's balance sheet restructuring or if it cannot reach agreement with its creditors. XO acknowledges that such a bankruptcy filing will necessitate the filing

## THE PARTIES

XO is a corporation, incorporated in Delaware and headquartered in Reston, Virginia, that provides voice, data and other services to business customers in the United States and abroad. XO is currently engaged in a corporate restructuring that it states is critical to the company's financial survival. The restructuring will include the cancellation of existing common stock and the issuance of new voting common stock of XO to Telmex and Forstmann Little in exchange for \$400 million from each of Forstmann Little and Telmex. XO states that upon consummation of the transaction, Forstmann Little and Telmex will each hold a non-controlling minority interest of approximately 40 percent in XO. The Applicant also states that no single shareholder will control XO, and that it is not anticipated that any other shareholder will hold more than a 10 percent interest in the company.

Forstmann Little Equity VII, which proposes to hold 25 percent of the voting stock of XO, and Forstmann Little MBO VIII, which proposes to hold 15 percent of the voting stock of XO, are Delaware limited partnerships. The general partner of Forstmann Little Equity VII is FLC XXXII Partnership, L.P., a New York limited partnership and the general partner of Forstmann Little MBO VIII is FLC XXXIII Partnership, L.P., a New York limited partnership. Forstmann Little Equity VII and Forstmann Little MBO VIII are affiliated with Forstmann Little & Co., a private equity firm that was formed in 1978. The Forstmann Little partnerships are part of a family of affiliated private investment funds. The Applicant states that Gordon A. Holmes, a citizen of the Republic of Ireland, is one of the general partners of the Forstmann Little entities investing in XO.

Applicant states that Telmex is a publicly traded Mexican corporation providing telecommunications services in Mexico. According to the application, Telmex is controlled by Carso Global Telecom, S.A. de C.V. ("CGT"), a Mexican holding company. Approximately 67 percent of the shares of CGT are held in trust for investment purposes for Carlos Slim Helu and his family members, all of whom are Mexican citizens. Through intermediate holding companies, Telmex owns 100 percent of the capital stock of Teninver, the Mexican entity through which Telmex proposes to make its investment in XO. Telmex's indirect, wholly owned subsidiary, Telmex USA, L.L.C. ("Telmex USA"), is authorized to provide international switched resale services in the United States, including on U.S. international routes where it is, or is affiliated with, a foreign carrier: specifically, the U.S.-Mexico, U.S.-Guatemala, and U.S.-Argentina routes.

According to XO, the transaction will produce significant public benefits, including greater competition in the provision of local telecommunications services. The Applicant asserts that the proposed transaction and the debt restructuring associated with it will provide critical funding for XO and a substantial reduction in its debt that will preserve and strengthen the company. The Applicant also submits that the proposed transaction will have no adverse effect on competition in any of the telecommunications markets in which XO provides services.

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of appropriate *pro forma* applications with the Commission, as well as amendments to the pending applications. See Application at 10 n.9.

The Applicant seeks expedited treatment of this application in order to permit the consummation of the proposed transaction. We decline to provide an abbreviated comment period as requested, because the Applicant has filed applications pursuant to Title III, which require a minimum 30-day review period by statute before a transfer of control may take place.

The applications for transfer of control listed below are a non-exhaustive list of the authorizations and license applications involved in this transaction. Interested parties should refer to the applications filed in **IB Docket No. 02-50** for a complete listing of licenses and authorizations.

### **PETITION FOR DECLARATORY RULING ALLOWING INDIRECT FOREIGN OWNERSHIP**

XO filed a petition pursuant to Section 310(b)(4) of the Act for a declaratory ruling that it would not serve the public interest to prohibit indirect foreign investment in XO. Such indirect foreign investment would consist of the proposed 40 percent investment, described above, by Telmex, through its indirect wholly owned subsidiary Teninver, S.A. de C.V. In addition, the Applicant states that Gordon A. Holmes, a citizen of the Republic of Ireland, is one of the general partners of certain limited partnerships and in turn will serve as a general partner of Forstmann Little.

The petition for a declaratory ruling under section 310(b)(4) of the Act has been assigned File No. **ISP-PDR-20020221-00007**.

### **TRANSFER OF CONTROL APPLICATIONS**

#### **SECTION 310 APPLICATIONS**

#### **Parts 90 and 101 - Wireless Services**

The following applications for consent to transfer control from Craig O. McCaw and the current shareholders of XO to the new shareholders of XO, including Forstmann Little and Telmex, have also been filed, and have been found, upon initial review, to be acceptable for filing:

<u>File No.</u> 0000774240	<u>Licensee</u> XO Communications, Inc.	<u>Call Sign</u> WPRT576
<u>File No.</u> 0000753828	<u>Licensee</u> XO LMDS Holdings No. 1, Inc.	<u>Lead Call Sign</u> WPLM397 (multiple authorizations)
0000772528	XO LMDS Holdings No. 1, Inc.	WPQT938 (multiple authorizations)

## INTERNATIONAL SECTION 214 APPLICATIONS

### Part 63 - International Service (47 C.F.R. § 63.18)

The applications listed below for consent to transfer control of international Section 214 authorizations from Craig O. McCaw and the current shareholders of XO to the new shareholders of XO, including Forstmann Little and Telmex, have been found, upon initial review, to be acceptable for filing. These applications are for authority, under section 214 of the Communications Act, to transfer control of section 214 authorizations for international global resale and facilities-based service, as specified below. XO and XO Long Distance have agreed to dominant carrier regulation on the U.S.-Mexico and U.S.-Guatemala routes. The applications have been assigned the following file numbers:

<u>File Number</u>	<u>Authorization Holder</u>	<u>Authorization</u>
ITC-T/C-20020221-00095	XO Communications, Inc	ITC-214-20001117-00674
ITC-T/C-20020221-00096	XO Long Distance Services, Inc.	ITC-214-19990402-00197

## DOMESTIC SECTION 214 APPLICATION

### Part 63 - Domestic Service (47 C.F.R. § 63.01)

XO Communications, Inc. and its wholly-owned subsidiaries, as holders of blanket domestic Section 214 authority, have filed an application for transfer of control from Craig O. McCaw and the current shareholders of XO to the new shareholders of XO, including Forstmann Little and Telmex.

## GENERAL INFORMATION

The transfer of control applications identified herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Final action will not be taken on the applications earlier than 31 days following the date of this Public Notice. Interested parties may file comments or petitions to deny on or before April 10, 2002. Oppositions or responses may be filed no later than April 24, 2002.

All filings concerning any or all matters in this Public Notice should refer to **IB Docket No. 02-50**. Due to the threat of contamination that resulted in the disruption of regular mail, the Commission released on November 29, 2001, an Order temporarily amending certain procedural rules on an emergency basis. Pleadings must be filed electronically (*i.e.*, by e-mail or facsimile), by overnight delivery service, or by hand delivery to the Commission's Massachusetts Avenue location.

**If filed electronically by e-mail**, pleadings shall be filed at the following e-mail addresses: [WTBSecretary@fcc.gov](mailto:WTBSecretary@fcc.gov); [IBSecretary@fcc.gov](mailto:IBSecretary@fcc.gov); and [CCBSecretary@fcc.gov](mailto:CCBSecretary@fcc.gov). Please also copy all those listed below. For security purposes, it is recommended that documents filed via electronic mail be converted to PDF format.

**If filed by facsimile**, pleadings shall be faxed to (202) 418-0187. The fax transmission should include a cover sheet listing contact name, phone number, and an e-mail address (if available).

**If filed by hand delivery**, documents shall be delivered to the Commission's contractor, Vistrionix, at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. All hand deliveries must be held together with rubber bands or fasteners, and any envelopes must be disposed of before entering the building.

**If filed by overnight delivery service other than U.S. Postal Service (USPS) Express Mail and Priority Mail**, filings must be addressed to 9300 East Hampton Drive, Capitol Heights, MD 20743. USPS first-class mail, Express Mail, and Priority Mail should continue to be addressed to the Commission's headquarters at 445 12th Street, S.W., Washington, D.C. 20554.

**In addition, one copy of each pleading must be sent to each of the following:**

The Commission's duplicating contractor, Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: [qualexint@aol.com](mailto:qualexint@aol.com); facsimile: (202) 863-2898; phone: (202) 863-2893.

(1) George Li, Telecommunications Division, International Bureau, 445 12th Street, S.W., Room 6-A761, Washington, D.C. 20554; e-mail: [gli@fcc.gov](mailto:gli@fcc.gov);

(2) Claudia Fox, Telecommunications Division, International Bureau, 445 12th Street, S.W., Room 6-A848, Washington, D.C. 20554; e-mail: [cfox@fcc.gov](mailto:cfox@fcc.gov);

(3) Susan O'Connell, Telecommunications Division, International Bureau, 445 12th Street, S.W., Room 6-A847, Washington, D.C. 20554; e-mail: [soconnel@fcc.gov](mailto:soconnel@fcc.gov);

(4) Imani Ellis-Cheek, Telecommunications Division, International Bureau, 445 12th Street, S.W., Room 6-A739, Washington, D.C. 20554; e-mail: [iellis@fcc.gov](mailto:iellis@fcc.gov);

(5) Zenji Nakazawa, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, 445 12th Street, S.W., Room 4-C401, Washington, D.C. 20554; e-mail: [znakazaw@fcc.gov](mailto:znakazaw@fcc.gov);

(6) Elizabeth Yockus, Policy and Program Planning Division, Common Carrier Bureau, 445 12th Street, S.W., Room 5-C143, Washington, D.C. 20554; e-mail: [eyockus@fcc.gov](mailto:eyockus@fcc.gov);

(7) Bill Dever, Policy and Program Planning Division, Common Carrier Bureau, 445 12th Street, S.W., Room 5-C266, Washington, D.C. 20554; e-mail: [bdever@fcc.gov](mailto:bdever@fcc.gov);

(8) Neil Dellar, Office of General Counsel, 445 12th Street, S.W., Room 8-A820, Washington, D.C. 20554; e-mail: [ndellar@fcc.gov](mailto:ndellar@fcc.gov); and

(9) Jim Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-A820, Washington, D.C. 20554; e-mail: [jbird@fcc.gov](mailto:jbird@fcc.gov).

Copies of the application and any subsequently-filed documents in this matter may be obtained from Qualex International, in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, via telephone at (202) 863-2893, via facsimile at (202) 863-2898, or via e-mail at [qualexint@aol.com](mailto:qualexint@aol.com). The applications and any associated documents are also available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The applications are also available electronically through the Commission's Electronic Comment Filing System (ECFS) and the Wireless Telecommunications Bureau's Universal Licensing System, which may be accessed on the Commission's Internet website at <http://www.fcc.gov>.

In addition to filing paper comments, parties may also file comments using the ECFS. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To obtain filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

For further information, contact Imani K. Ellis-Cheek, International Bureau, at (202) 418-1028; Elizabeth Yockus, Policy and Program Planning Division, Common Carrier Bureau, at (202) 418-1385; Zenji Nakazawa, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418-7949.

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